interests of the alleged offenders, because this Bill is intended to apply only to the disposal of those articles which are subject to speedy and natural decay. If they are not sold at once, the chances are that they will fetch no value. And if ultimately the alleged offender is found to be innocent, he would not get the benefit of these articles. If, however, the provision in this Bill is accepted, and if ultimately the offender is found to be innocent, he will have the benefit of having the value of these articles. After all, these articles which are subject to speedy and natural decay consist of such articles as leaves and such other things. However, inasmuch as my Friends see an evil design on the part of the Government, I have no objection whatever to the adoption of my Friend's suggestion, namely, to refer this Bill to a Select Committee—not to bring in another Bill. I therefore, move now that my motion be postponed for the present. I shall, after consulting my Friend, make formally a motion for referring this Bill to a Select Committee and also give the names of Members for that Committee. I move, Sir, that the consideration of this question be postponed."

The motion was duly seconded.

Mr. Abdul Hameed Khan:—" Is it in order, Sir, for a Member who has moved the original motion to move for an adjournment of that motion?"

The hon. Diwan Bahadur Sir M. Krishnan Nayar:—" I do so, Sir, because my hon. Friend suggested it."

* Mr. Sami Venkatachalam Chetti:—" I have no objection, Sir, to that course. But I may say, after the hon. the Law Member's suggestion, that I never suspected any evil design on the part of the Government. I only wanted to show to the House that the provision in the Bill might be easily used by the police who have got a special reputation of their own in this Presidency, to oppress the people. I have no objection to withdraw my motion."

The motion that the Bill be taken into consideration was by leave withdrawn.

* The hon. the President:—" Order, order. The question before the House is that the consideration of this Bill be adjourned."

The motion was put and carried.

XIII.—A BILL TO VALIDATE THE CONSTITUTION OF THE SESSIONS DIVISIONS OF EAST AND WEST TANJORE (BILL No. 1 of 1931).

* The hon. Diwan Bahadur Sir M. Krishnan Nayar:—" Mr. President, Sir, this other Bill that I am introducing is an important one. I introduce the Bill[a] to validate the constitution of the Sessions divisions of East and West Tanjore. (After a pause.) I move further, Sir, that the Bill be taken into consideration at once.

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[a] Printed as Appendix IX on pages 288—290 infra.

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"Sir, the genesis of this Bill is this: The Registrar of the High Court wrote a letter to the Government stating that the hon. the Judges of the High Court felt serious doubts as to the legality of the constitution of the East and West Sessions Courts of the Tanjore district. As my lawyer friends of this Council may be aware, section 7 (1) of the Criminal Procedure Code which enables the Government to establish Sessions Courts in this Presidency is to this effect, that a Sessions division shall be a district or consist of districts. It does not say that a Sessions division shall consist of a part of a district. In the Tanjore district, since the year 1921, there are two Sessions Courts, one known as the West Tanjore Sessions Court and the other as the East Tanjore Sessions Court, the East Tanjore Court being situated in Negapatam and the West Tanjore Court being situated in the town of Tanjore itself. Having regard to the provisions of that section, the hon. the Judges of the High Court, as I submitted, Sir, said that they had grave doubts about the validity or the legality of the constitution of these two courts, and they asked the Government to consult their legal advisers and to take the necessary steps. On the receipt of this letter, the Government naturally consulted the Advocate-General. The Advocate-General examined all the provisions of the Criminal Procedure Code and came to the conclusion that the High Court was justified in their doubts, that the legality of the constitution of both these courts was open to question. Thereupon, this Government placed the whole matter before the Government of India and requested that Government to amend section 7 (1) in such a manner as to include in a Sessions division part of a district also. They further requested the Government of India to add another provision, sub-clause (5) to clause 7 of the Criminal Procedure Code, validating the existence of these two courts from the year 1921. On receipt of that communication, the Government of India went carefully into the matter and they took up a clear and definite attitude. They said that the constitution of these courts was really illegal and this illegality should not be allowed to continue any longer. They further said that the validity or the legality of the proceedings in these two courts was also likely to be questioned at any stage of an appeal or other proceedings, and they were therefore of opinion that the necessary amendment should be made in the Act. But, with reference to the request of this Government that they themselves should introduce the necessary amendment in the Central Legislature, they said that this was not of such importance as to make it necessary for them tc undertake legislation in the Central Legislature, and they advised this Government to bring in the necessary amending Bill in this Council, and stated that the Governor-General would give his sanction under section 80 of the Government of India Act. Accordingly, this Government drafted a Bill and sent it to the High Court for their opinion. The hon. the Judges examined that Bill and communicated their opinion to this Government, stating that the Bill was a suitable one. Then, this Government applied to the Government of India for sanction of the Governor-General under section 80 of the Government of India Act.

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That sanction was communicated to this Government and this Government has accordingly brought forward this Bill now. After the sanction of the Governor-General was obtained and after notice of the introduction of this Bill was given to the Secretary to this Council, what was feared by the Government of India actually took place. As I submitted, Sir, the Government of India stated in their letter to this Government that it was likely that the legality of the proceedings of these two courts would be questioned at any stage. What they feared and anticipated would take place, did really take place. A member of the Madras Bar, Mr. Jayarama Ayyar, an advocate, on behalf of a prisoner who had been condemned, who had been sentenced to be hanged by the Negapatam Sessions Court, put in an appeal to the High Court against the conviction and sentence, and he also put in a petition specifically raising the question of the legality of the constitution of the Negapatam Sessions Court. Therefore it is that I submitted to the House that what was feared by the Government of India actually did take place. In order to hear and dispose of that petition put in by the Advocate, Mr. Jayarama Ayyar, a full bench of the High Court was constituted. The very fact that a petition was put in and that it was thought necessary to constitute a full bench for hearing it shows, I submit, the need for legalizing the existence of these courts.

"As my hon. friends in this Council will observe, what is stated in this Bill is 'whereas doubts have been raised as to the validity, etc.' 12-30 p.m. Of course, all that is possible for the Government to say with reference to such a legal matter is only this. The facts that the legality of the proceedings is questioned and that the High Court considered it necessary to constitute a full bench, show that at least there are doubts and that it is necessary to validate the existence of these courts. Yesterday, the full bench came to a decision and the decision of the full bench again emphasises the need for this Bill. The decision of the full bench also shows the existence of doubts. The majority of the Judges of the Full Bench have come to the conclusion that the constitution of the courts is a valid one. One Judge, however, has come to a different conclusion. He differed from the decision of the majority and has held that it was *ultra vires* of this Government to have issued those notifications constituting the two Sessions Courts in the revenue district of Tanjore. I need not dilate further upon this point. The High Court themselves—apparently all the Judges, because in the communication to the Government, what is stated is 'hon. Judges and not some of the Judges (very often, when there is a difference of opinion among the Judges, communications to the Government state 'the majority of the Judges' or 'such and such a Judge dissenting, etc.')—the Advocate-General, the Government of India and one Judge in the Full Bench think that it is invalid. Doubts do exist and it is quite possible that another Full Bench may come to a different conclusion, or it is possible that the Privy Council may come to a different conclusion. As a matter of fact, as my hon. Lawyer Friends

know, there have been instances where even in criminal cases, the Privy Council has differed from the conclusions of a Full Bench of the High Court. My hon. Friends are aware of the military accounts case known as the Subramania Ayyar case. He was convicted by a majority of the Judges of a Full Bench. I believe that one of the Judges dissented from the decision—I think it was Mr. Justice Davies—and the case was taken before the Privy Council. The Privy Council differed from the conclusion of the majority of the Full Bench and agreed with the differing Judge. I refer to this case, only for the purpose of showing that it is quite possible that the Privy Council may come to a different conclusion relating to the validity of the constitution of these courts. I am glad that the majority of the Full Bench have come to this conclusion, namely, that the existence of the courts is valid. So, we shall have a double dose of validity by the passing of this Bill. With these observations, I move that the Bill be taken into consideration."

The hon. Khan Bahadur Sir MAHOMED USMAN SAHIB Bahadur:—"I second the motion, Sir."

* Mr. T. C. SRINIVASA AYYANGAR:—"Mr. President, Sir, without going into the question whether the Bill was rightly or wrongly introduced, I would only like to say this, that the House should consider whether, in the light of the considered opinion of the Full Bench, which is a proper institution to expound the law—and the Full Bench has come to the conclusion, after hearing arguments on both sides and considering the matter judicially—it would not be proper to request the High Court to reconsider the matter and to pursue the further stages of the Bill later, if the High Court consider the same necessary. Whenever questions come before a Full Bench, if there is a difference of opinion among the Judges, it is the view of the majority that prevails and that view is considered to be law, unless a further Full Bench or a Full Court of all the Judges or the Privy Council comes to a different conclusion. Now, we have the judicial dictum of the High Court, in which four Judges have agreed. I want to put it to the hon. Law Member whether, it would not be proper in the circumstances which have transpired, to request the High Court to reconsider the matter."

* Mr. C. SATYANARAYANA CHOUDARI:—"Mr. President, Sir, I am sorry I am unable to support the Bill. Whatever, the view of the majority of the Judges constituting the Full Bench may be, I am afraid, the view of the dissenting Judge is right. There can be no doubt that there is a serious constitutional defect in the original constitution of these two courts. When we come to the constitutional issues involved in the Bill now before the House, I am afraid, we are really treading on a slippery ground. I am aware that the Government has the advice of the best legal head of the day, but I feel that this Council as at present constituted cannot pass this Bill into law in its present form. I may remind the House that this Legislature is only a creature of the Government of India. The British Parliament is a sovereign body,

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whereas this Council is only a subordinate legislature. The peculiarity of a sovereign body is that it can do anything. The writers on constitutional law have stated that the sovereign body can do anything; by one stroke of the pen it can declare that all the properties of my zamindar friends opposite to me, are the properties of the Government and that all the fortunes of hon. Members on the Treasury Bench are the properties of the state. That is the extraordinary power which a sovereign legislature has got. The powers of that body are so unlimited that it is capable of doing anything, except one thing, namely, that it cannot make a man a woman or a woman a man.

" Now, here is a Bill which proposes to declare that all the irregular things, all illegal things done by these two courts during these seven or eight years, are legal and valid. The Bill proposes to validate and regularize all irregularities and I submit it is an extraordinary thing for any legislature and it is only the sovereign legislature that has got the power to do it. A subordinate legislature like this Council has no power to do that. A similar question arose in connexion with the Religious Endowments Act (I of 1925). Hon. Members will remember that, when the Bill was remitted by the Governor to a Council other than the one which passed the Bill, a constitutional issue was raised whether it was competent for the Council to have passed the Bill into law. The matter was then taken up before the High Court. The Government of Madras then felt a doubt and sought the permission of the Government of India to introduce a validating Bill validating Act I of 1925. The Government of India took the view that a validating Act as such cannot be passed by a subordinate legislature like the Madras Council as at present constituted and that it is only a sovereign legislature like the British Parliament that can do that. Thereupon the Government of Madras came forward with re-enacting Bill with a clause inserted in it to the effect that all acts done under the old Act must be deemed to have been legally done. Even there the Government is said to have blundered and therefore the matter was taken before the courts again. I have referred to the case of the Religious Endowments Act because, there the Government of India have clearly expressed the view that it is not competent for a subordinate legislature like the Madras Council to pass a validating Act. I may be told by the hon. the Advocate-General or the Law Member that there is the authority of the Madras High Court for the position that a validating Bill can be passed by a local legislature. There is only one decision and that is the decision of Justice Kumaraswami Sastri; the learned Judge says that a subordinate legislature like the Madras Council has got the power to validate an Act, but he has based his decision upon a Privy Council decision which when closely examined does not justify the position which the learned Judge has taken. I am certain that when the matter comes before the High Court once again, the view of Justice Kumaraswami Sastri will no longer be upheld. Now the position is, if this Bill is passed into law it will again be contested as illegal. When I say this, I want to assure the hon. the Law Member that I am most willing

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to co-operate with him to get out of this difficulty which has been created by some blunder somewhere about eight or nine years ago. But the point is whether this is the proper procedure to be adopted and whether the Bill as it stands can be legally passed into law. In my opinion, the proper procedure seems to be this. Section 7 of the Criminal Procedure Code says that a Sessions division shall be formed in a district or districts. Now, when the Government propose to constitute a Sessions division for a part of a district, the proper procedure for the Government would be to declare part of a district as a district for the purpose of that business and then to constitute a Sessions division. The Government has not satisfied that condition precedent, the condition precedent being, a declaration by means of a notification by the local Government that the Government regard a particular part of a district as a district for the purpose of a Sessions division. They have not done that and therefore the whole trouble has arisen. The proper thing now would be for the Government to come forward with a Bill asking this Council to say that a part of a district comprising certain taluks in the Tanjore district shall be regarded as a district for the purpose of the constitution of a Sessions division and then to insert a clause in the Bill to say that this Act shall be deemed to have been passed on the date on which the two courts were irregularly constituted by the local Government. There is no doubt, it has been admitted by the highest tribunals of the land and by all jurists that even a subordinate legislature has got the power to pass any law with retrospectivity. Though a subordinate legislature cannot validate an illegal law and cannot regularize irregular things of the past, it can pass an enactment and declare that this Act shall have retrospectivity. That would be the proper procedure for the hon. the Law Member to adopt, to get out of this difficulty and avoid all further difficulties. Therefore, I feel sorry I have to oppose this Bill as it stands at present."

* Mr. BASHEER AHMED SAYEED:—" Mr. President, Sir, I move that the consideration of this Bill do stand adjourned until the question of the desirability of the abolition of the Sessions Court of East Tanjore is examined and decided upon by Government.

" Sir, I need hardly debate on the position that is now being perpetuated by the act of the Government in not having validly constituted this Court. Already in the district of Tanjore there is a very big mass of public opinion against the continuance of the court in East Tanjore. I have been recently looking into the statistics for 1929 and I find from those statistics that the volume of work in both these courts, Tanjore East and West, is much less than the volume of work in each of half-a-dozen of the courts in the Presidency. I find from the statistics for 1929 placed on the table of this House, exhibiting by districts the number of cases received and disposed of and pending disposal. East
12-45 p.m. Tanjore 26, West Tanjore 48, and the total number of cases in Tanjore is 74. Whereas in Madura the total number of cases is 117, in Ramnad it is 70, in Coimbatore 173, in Tinnevelly 113 and in Trichinopoly 79. All these districts have got only one Sessions division and one Sessions

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Court ; and I don't think there is any reason why there should be two Sessions Courts in Tanjore district for so small a number of cases as 74. With regard to appeals, similar is the case in East Tanjore and West Tanjore."

* Mr. C. Satyanarayana Choudari :—" On a point of order. Is the hon. Member in order in referring to the details of the case? We are here considering only the main outlines of the Bill, and it is under that impression that I did not refer to matters like those to which the hon. Member is now referring."

* The hon. the President :—" He is quite in order."

* Mr. Basheer Ahmed Sayeed :—" I was referring to the number of appellate cases filed in the two Sessions Courts of Tanjore, and the figures are given at page 23 of the statistics of criminal courts in the Madras Presidency for 1929. And I find there 19 appeals as having been filed in the East Tanjore Sessions Court and 35 in West Tanjore. Whereas in the case of North Arcot there have been 70 appeals, in South Arcot 69, in Madura 91 and in Tinnevelly 68. All these things show that there is not enough justification for the continuance of the Sessions Court in East Tanjore. I find, in the list of questions and answers placed on the table of this House this morning, in unstarred question No. 102 the following interpellation :—' Will the hon. the Law Member be pleased to state whether the Government have under consideration the question of appointing an additional judge to the district court of Tanjore and of abolishing the district court of Negapatam.' The answer is ' Yes.'

" Thus you will see that the Government are already considering the abolition of this court, about which there is this Bill to-day for validating it. I do not think that Government will be justified in proceeding with this Bill any further. The people of East Tanjore do not want a Sessions Court at Negapatam. Besides, as already pointed out by Mr. Srinivasa Ayyangar, the majority of the Judges of the High Court have held that the court is validly constituted; and on that ground there is no necessity for this amending Bill. Hence I believe this Bill can wait until Government come to a final decision on the question of the abolition or continuance of this court. I will go further and say that there is no necessity for this Bill at all, for when once the High Court has decided this point it can hardly be expected that any other party will be coming up with a similar case for reference to a Full Bench. Besides I oppose this Bill on the ground that it seeks to validate the future acts of this court. That is rather not a happy procedure from the legal point of view. So, I propose that the further consideration of this Bill be adjourned."

* Mr. T. S. Ramaswami Ayyar :—" In seconding this motion of my hon. Friend, Mr. Basheer Ahmed, I beg to state that we are really in a maze. Government first of all thought that two Sessions divisions were necessary in the Tanjore district, and they issued a notification accordingly. Now the question is raised whether the courts were legally

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constituted. This question has been raised after the courts have been in existence for a number of years. It is now sought to give the court a legal basis. The matter was referred to the Government of India, and they replied that it is up to the Local Government to legalize their past act. It has been pointed out by the hon. the Law Member that a Full Bench of the Madras High Court has decided that the East Tanjore court has been validly constituted. Now, in view of that decision, this validating Bill is not necessary, unless, as some member remarked, the hon. the Law Member thinks that a double dose of validation would be useful.

"In the whole of this discussion we have forgotten the essential question whether we need a sessions division for East Tanjore. Of course, there was a need at the time when it was constituted; for there were arrears of work to be cleared off. When the legality or otherwise of the very constitution of the court is now questioned, 'is it now absolutely necessary to continue the court?' Of course, it may be necessary to validate the past acts of the court. But what about the future? Do we need two courts any more? That question has been raised by the memorial submitted to the hon. the Law Member by some lawyers of the Tanjore bar. I think the hon. the Law Member pointed out to the memorialists that it is a matter resting with the High Court to say whether the present state of work necessitates the continuance of the Sessions Court at Negapatam. When that is so, there is no urgent necessity to validate for the future. It is enough if we validate the past acts alone. And this, as I pointed out, has been done by the Full Bench decision of the Madras High Court. Under these circumstances, I think it is right that we should adjourn the consideration of this question till we are able to come to a conclusion on the question of the continuance or otherwise of the Sessions Court at Negapatam. For these reasons I beg to support the motion of Mr. Basheer Ahmed."

* The hon. the PRESIDENT:—"The question is that the consideration of this Bill do stand adjourned until the question of the desirability of the abolition of the Sessions Court of East Tanjore is examined and decided upon by Government. Both the original motion as well as the amendment are for the discussion of the House."

The hon. Diwan Bahadur Sir M. KRISHNAN NAYAR:—"I do not wish to keep the House in suspense as to the opinion of Government on this question of adjournment. I oppose the motion for the following reasons. The memorial to which reference was made was submitted to the Government, and copies thereof were also, I think, sent to the members of this Council. The figures quoted by Mr. Basheer Ahmed were from the memorial submitted by some members of the Tanjore bar."

* Mr. BASHEER AHMED SAYEED:—"On a point of order, Sir. The hon. the Law Member is misinterpreting and misrepresenting me when he says that the figures are not from Government records, but from the memorial of the members of the Tanjore bar. I say they are from the Statistics of the Criminal Courts in the Madras Presidency for 1929, a record prepared by Government themselves."

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The hon. Diwan Bahadur Sir M. KRISHNAN NAYAR :—" I beg my friend's pardon. As a matter of fact, the get-up of the copy of the memorial is so similar to that of the copy of the Administration Report of the Madras Presidency for 1929 that I thought that my friend was quoting from that memorial. However, that fact is neither here nor there. The motion for adjournment is really in the interests of West Tanjore bar. There is apparently a conflict of interests between the members of the West and East Tanjore bars. Some members of the West Tanjore bar waited on me and asked me to abolish the East Tanjore Sessions Court. Their object evidently is to have all the litigation in their court. But curiously enough they forget that the question of validity affects that court also, and they do not refer to that point at all in their memorial. In this matter, namely, whether there is any need for the continuance or otherwise of a particular court, the High Court is the constitutional adviser of Government. If the High Court recommends to Government that there is no need for the continuance of a court, then the Government will consider that question.

" Now the question before the House is to give the Sessions Courts of East and West Tanjore a legal basis. And after they are made valid courts, the question of the abolition of one or the other of these courts may be considered. As members of this House are aware there have been several cases where valid courts have been abolished for want of sufficient work. I see no reason why we should not now proceed with the consideration of this Bill, and therefore, I oppose the adjournment."

* Dr. P. SUBBARAYAN :—" Mr. President, Sir, I am really surprised at the attitude taken by the hon. the Law Member to-day, who has generally been known to speak in a conciliatory manner. As a matter of fact in the Full Bench of the High Court four hon. Judges have decided that this court is a validly constituted court. But if the High Court had decided that it has not been validly constituted, then there would have been need for passing this measure. Now the only tribunal that can upset this decision of the High Court is the Privy Council. And I am sure hon. Members know as well as I do that it will be twelve months, if there is any appeal, before that body comes to a decision. So even then there is plenty of time for the Government to pass this Bill, unless they think it necessary to have a double dose of validation in the meanwhile. Therefore I think that for some time at least we ought to be satisfied with one dose, namely, with the decision of the High Court that the court has been validly constituted. Hence I do not see the urgency for this Bill and so I support the motion for adjournment."

* Mr. K. P. RAMAN MENON :—" Mr. President, I did not really intend to take part in this debate in the beginning, but seeing how the matter has developed I think I would not be doing my duty if I do not contribute my quota to the discussion. One of the matters before the House is the adjournment of the further consideration of this matter. And I

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decidedly agree with the Law Member in thinking that adjournment will do us no good, and my reasons for thinking so are these. As a matter of fact, if this question is adjourned, then the question of validation of the court will remain unsolved until the matter is again taken up. The reason advanced by Mr. Basheer Ahmed is that 'when you are considering the abolition of the East Tanjore Court altogether, why do you want to validate its acts?' Obviously the answer is that if you do not validate its acts, which question has already been raised before the High Court, then the whole question will have to be answered in a court of law. Again it is said why should you pass a validating Act when the High Court has already held that the East Tanjore Court has been validly constituted. But if you validate it, then there is no difficulty. For example, in answer to Mr. Basheer Ahmed's argument I wish to state this. Suppose somebody who has been imprisoned by an order of the Court of Sessions of East Tanjore files a suit for damages for false imprisonment against the Government on the ground that the constitution of the court was wrong and that he was imprisoned under a verdict given by a court which was invalidly set up and suppose he claims damages to the etxent of Rs. 10,000. He can take the case up to the Privy Council and it is quite possible that the Privy Council may disagree with the opinion of the majority of the Judges who pronounced the recent judgment of the Full Bench of the Madras High Court. The possibilities and implications arising from such cases should be avoided and that you can do by passing a validating
1 p.m. Act. In the absence of validation, Government will be answerable for this. As a matter of fact these are within the range of practical politics. The question will have to be answered as to whether the constitution of the East Tanjore Session is valid or not; and the fact that the court is going to be abolished hereafter will not in any way solve the issue in so far as what has been done hitherto. This difficulty can be overcome by the validation of its constitution ever since the time it was constituted.

"The hon. Dr. Subbarayan said that there is no need for the validation as four out of the five learned Judges of the High Court have already stated that it is valid and queried as to the need for pressing forward this Bill when there are full 12 months by which period of time alone we can expect the decision of the Full Bench of the High Court to be taken to the Privy Council. That is not a sufficient argument for the adjournment of this issue as I have just now pointed out. We are only shelving the question which might arise at any moment."

Mr. BASHEER AHMED SAYEED:—"Question."

* Mr. K. P. RAMAN MENON (*continued*):—"I shall proceed with the other aspects of the case as to whether in the circumstances, it is necessary to go into the matter at all. The doubt as to the possibility of there being more than one Sessions Court in one revenue district arose in 1907 as can be seen from a case reported in I.L.R., 30 Madras.

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It arose with reference to a conviction by a First-class Magistrate which was confirmed by a Sessions Judge. Where there were two Sessions Courts in the same Revenue district, the doubt arose as to whether the particular Sessions Court was properly seized of the appeal. The doubt finally was set at rest on the ground that there were more than two Sessions Courts even from before the time when the then extant Criminal Procedure was passed. Again divergence of opinion as to the validity of the constitution of this Court is itself a very good reason for passing a validating Act. It has been held to be valid by the learned Judges of the High Court, there being only one dissentient Judge and my friend Mr. C. Satyanarayana Choudari is prepared to agree with the dissentient Judge. My Friends, the hon. Leader of the Opposition, the hon. Mr. T. C. Srinivasa Ayyangar and others cite the majority opinion of the High Court. This aspect is an additional reason for giving validity to the constitution of that court ; and I do not think there will be any harm in giving a 'double dose' of validity to its constitution to use the expression of the hon. the Law Member. Of course, there has been a divergence of opinion, as it is natural that there should be and here also we have divergence of views in the matter. But so far our aim is only to regularize what apparently is irregular ; and I see nothing wrong in passing the Bill. It will not be against the interests of the community; and on the contrary, such a step is sure to set doubts at rest and strike a blow at litigations preferred against the Government by the persons affected by the decisions of the said court. Sir, it is always better to be on the safe side. In this view of the matter, Sir, I agree with the hon. the Law Member in thinking that the matter must be considered now and that the measure be passed into law."

* Mr. T. C. Srinivasa Ayyangar :—" Mr. President, Sir, my hon. Friend from Malabar put up a special pleading. The point which I want to suggest is the desirability of referring the matter to the High Court. There is really a constitutional point. We are not to legislate whenever the Judges who compose the Full Bench differ. We have never come to the rescue of legal complexities whenever there is difference of opinion in the Full Bench. The High Court suggested the desirability of giving validity to the court by legislation. Now the learned Judges of the High Court, the highest court of the land, in a Full Bench have considered and laid down the law, and expounded the law. Are we to say in effect by this piece of legislation that the decision of the majority of the Full Bench does not commend itself to the legislature? I think that it would be advisable that in the interests of propriety, we should refer the matter back to the High Court. The adjournment motion will not in any way tie the hands of the Government, nor would it introduce any complications into these matters. At any rate, so far as this Presidency is concerned, for which alone this Council can legislate, there is no danger whatever of any unnecessary litigation, for the decision of the Full Bench will be

binding upon every court and will be binding upon the High Court itself. I can understand certain strange anomalies creeping in now and then, which would demand legislation. I will give a concrete illustration. A Division Bench composed of two Judges may differ, one of the Judges may agree with the judgment of the lower court. Then that Judge's judgment prevails. Another Division Bench may differ from it. Conflicting judgments would come to exist. Sometimes we are familiar with such cases. There may be a Full Bench with three Judges, one of whom generally would have been a member in the previous Bench. Supposing there was a difference of opinion in such a case, and the Judge whose opinion prevailed for the moment in the first Division Bench agreed with one of the two other Judges of the Full Bench then the decision of that Judge and of the concurring Judge of the Full Bench lays down the law. The curious position ensues, viz., the view of the two Judges of the Full Bench would prevail over the individual opinion of the three Judges, in which case there may be a difficulty, and to avoid the difficulties that may ensue, the desirability would be to put an end to this difference of opinion by a piece of legislation. There is no such case at all now. Since the reply of the High Court to the communication of the Government, four Judges gave a considered opinion which is binding upon the courts till set aside by some other higher tribunal. And in the light of this, are we to say that there is likely to be doubt about it? Is it respectable? Is it the way in which we do our legislative business? Therefore, Sir, I suggest the desirability of referring the matter to the High Court back again. The Leader of the Opposition suggested that there is no danger whatever involved in the matter lying over; and the Government may further take the advice of the High Court and then we can see if we should have any legislation regarding the affair.

"I stress the fact that there is no danger involved in the matter of allowing this matter to lie over, and I can assure the House that there is no likelihood of the matter giving trouble. There are various Acts on the Statute Book extending immunity to the judiciary from the criminal and civil proceedings—since there is no danger—to be faced, why should we rush legislation merely because there is a difference of opinion among the Judges of the Full Bench?"

* Mr. YAKUB HASAN:—"Mr. President, Sir, I do not see any reason why this Bill should not be passed. I have heard the speeches made from this side of the House, but I do not see why the decision arrived at by the hon. Judges of the High Court should in any way prevent us from passing this Bill. I do not see any harm in validating the constitution of the two Sessions Courts now existing in the Tanjore district. From the statistics of cases given by Mr. Basheer Ahmed, I do not think it is necessary to maintain the Session Court at Negapatam. If we are for the abolition of the court, we can take the matter up at any time and the question of its abolition need not be an excuse for adjourning the consideration of this Bill. It has been

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said that this would be superfluous act of this Legislature simply because the Full Bench of the High Court has confirmed the validity of the courts. The matter has gone too far to be dropped by us for it had been taken to the Government of India and they have suggested that the local Legislature should deal with it. There is no harm in validating a thing that is claimed by some to be already valid. Therefore, Sir, I support this Bill and oppose the adjournment motion."

* Diwan Bahadur M. Gopalaswami Mudaliyar:—"Mr. President, Sir, I may be repeating almost the very ideas which hon. Members on this side have given expression to. There are two Sessions Courts now in Tanjore district and the subject before the House is the validation of one of the courts. So far as the adjournment motion is concerned, I oppose it. Some have raised the issue of the court's abolition. We will take it for granted that it is going to be abolished. However, there may be influences brought to bear in the decision upon that point and hence it is beside the motion before us. The court is there and is going to exist there if it is not otherwise decided. Mr. Srinivasa Ayyangar said that the decision of the High Court is that the court is validly constituted. My hon. Friend from Calicut recounted the difficulties to which the Government may be put on account of suits against the Government. Mr. Srinivasa Ayyangar's contention that there was the ruling of the High Court is not improbable enough as it may be that we may have decisions of another Full Bench overruling this one. 1-15 p.m.
I think we have no instances of that sort. Therefore considering all these circumstances I think it is very desirable we pass the motion at once so that we may put an end to possible litigations. Lawyers would like to have as much litigation as possible. But in the interests of the public as well as justice, I think it is very desirable that the question is settled and the motion is passed."

* Sriman M. G. Patnaik Mahasayo:—"The only ground on which the motion is opposed is the Full Bench decision by which the Government act has already been validated. It is too far fetched to say that another Full Bench would overrule the decision of this Full Bench. But there is the possibility of the matter being carried to the Privy Council and a lot of money being spent. Why not the legislature step in and prevent it? In that way it is necessary to validate the establishment of the two courts by the legislature."

* Mr. G. Simhachalam Pantulu:—"Instead of creating more difficulties in this way, we shall leave it to the High Court. Why should we imagine difficulties and launch ourselves into difficulties? Why should we go into more details and create more difficulties and try to provide for them?"

The motion for the adjournment of the consideration of the Bill was put and lost.

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* Mr. Basheer Ahmed Sayeed :—" I move, Sir

'*that the Bill to validate the constitution of the sessions divisions of East and West Tanjore be referred to a Select Committee consisting of the following persons* :—

1. The hon. the Law Member.
2. Mr. Nadimuthu Pillai.
3. Mr. K. S. Sivasubramanya Ayyar.
4. Mr. Sami Venkatachalam Chetti.
5. The Advocate-General.
6. Mr. K. P. Raman Menon.
7. Mr. R. Madanagopal Nayudu.
8. Diwan Bahadur M. Gopalaswami Mudaliyar.
9. Mr. V. P. Narayanan Nambiyar.
10. Mr. T. S. Ramaswami Ayyar.
11. Rao Bahadur C. Natesa Mudaliyar.
12. Mr. N. Sivaraj.
13. Mr. K. Koti Reddi.
14. Mr. Basheer Ahmed Sayeed ".

Mr. Sami Venkatachalam Chetti :—" I second it."

* The hon. Diwan Bahadur Sir M. Krishnan Nayar :—" I oppose that motion. As a matter of fact there is only one section in this Bill. The object of that section is to validate the existence of both these courts. I do not understand what there is in the Bill for the consideration of a Select Committee. I submit it is necessary to have this passed into law as early as possible. As I told my friend, Mr. Sami Venkatachalam Chetti, in connection with another matter, if it is really necessary for the Bill to go to a Select Committee I would not have the slightest objection. I see, however, no necessity for the Bill going to the Select Committee."

The motion was put and lost.

The main motion that the Bill be taken into consideration at once was put and carried.

Clauses 1, 2 and 3 of the Bill were then put, passed and added to the Bill.

The preamble was then put, passed and added to the Bill.

The hon. Diwan Bahadur Sir M. Krishnan Nayar :—" I now move that the Bill be passed into law."

The hon. Mr. H. G. Stokes :—" I second it."

The motion was carried and the Bill was passed into law.

XIV.—THE MADRAS MOTOR VEHICLES TAXATION BILL (Bill No. 2 of 1931.)[a]

* The hon. Diwan Bahadur B. Muniswami Nayudu :—" I beg to introduce the Madras Motor Vehicles Taxation Bill. The object of the Bill is to abolish the toll-gates and to levy a provincial tax on

[a] Published in the *Fort St. George Gazette*, dated 20th January 1930.